

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Establishment of Rules and Policies)	IB Docket No. 95-91
For the Digital Audio Radio Satellite Service)		GEN Docket No. 90-357
In the 2310-2360 MHz Frequency Band)	
Radio Service Terrestrial Repeaters Network)		

COMMENTS OF RADIO ONE, INC.

Radio One, Inc. (“Radio One”) respectfully submits these Comments in support of the Petition for Declaratory Ruling (“the NAB Petition”) filed with the Federal Communications Commission (“the FCC” or “the Commission”) on April 14, 2004 by the National Association of Broadcasters (“NAB”).

Introduction

Radio One hereby urges the Commission to prohibit Satellite Digital Audio Radio Services (“SDARS”) from providing locally-oriented services on nationally distributed channels. If the Commission allows SDARS to provide local programming, it will give SDARS providers an unfair advantage over terrestrial radio stations, negatively impact the public, and undermine confidence in the Commission’s application process.

I. SDARS will gain an unfair advantage over terrestrial broadcasters

The FCC, in its Report and Order released March 3, 1997 (the “Report and Order”) setting forth the rules and policies for SDARS, assured terrestrial radio stations that SDARS would provide “*new* services that local radio inherently cannot provide.”¹

¹ In the Matter of Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Frequency Band *Report and Order Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754 (1997) (emphasis added).

Because SDARS promised to provide national programming only, there was no need to assess the impact of satellite-delivered local content on terrestrial broadcasters. Therefore, the FCC must make such an assessment before making any decision whether to permit SDARS to provide local content.

Terrestrial broadcasters are currently faced with significant limitations that would prevent them from effectively competing with SDARS. In particular, multiple ownership rules prevent terrestrial broadcasters from gaining a monopoly in any market, the policy being that diversity of viewpoints is encouraged. In the case of SDARS, however, no such policy is in place. SDARS providers have no limitations on the amount of market share they can control, and there are no rules or regulations in place to ensure the diversity of viewpoints. Ultimately, if SDARS providers are able to attract enough listeners to either significantly decrease or eliminate altogether their subscription fees and lower equipment costs, there would be no rules or regulations in place to prevent them from targeting and/or monopolizing a local radio market.

In addition, there are minimal public interest requirements affecting SDARS programming and operations. Terrestrial broadcasters, on the other hand, as a function of their obligation to serve the public, are subject to numerous rules that regulate programming and operations. Some of those rules include requirements that terrestrial broadcasters maintain a main studio location², make regular station identification announcements³, retain letters received from the public in local public inspection files⁴, limit the broadcast of telephone conversations⁵, prevent the broadcast of lottery

² See 47 C.F.R. §73.1125.

³ See 47 C.F.R. §73.1201.

⁴ See 47 C.F.R. §73.1202.

⁵ See 47 C.F.R. §73.1206.

information⁶, identify sponsors⁷, establish contest rules⁸, avoid broadcast hoaxes⁹, broadcast emergency information¹⁰, abide by minimum operating schedule requirements¹¹, and maintain station logs,¹² to name a few.

The most critical requirement for terrestrial broadcasters, however, is the requirement that they devote a portion of their programming to public service and compile reports evidencing such service. SDARS providers are not bound to satisfy this critical requirement. In sum, SDARS are not accountable to the public in the same way and may offer any quality of public service they choose, even if it does not meet the needs of local communities.

II. The provision of local programming by SDARS providers will have a negative impact on the public

The provision of local programming by SDARS providers is contrary to the public interest because there is a strong possibility that it will erode support for what many people use as a lifeline to their community, namely, the local radio station. For instance, stations owned by Radio One regularly go out into the community and interface with residents on issues such as violence in the community, disaster relief, teen pregnancy, AIDS awareness, and more. This level of community involvement cannot be duplicated by a national service that is unable to interact with the residents on a daily basis and remain abreast of their local needs and concerns. In addition, SDARS providers promised throughout the application process to remedy the problem of

⁶ See 47 C.F.R. §73.1211.

⁷ See 47 C.F.R. §73.1212.

⁸ See 47 C.F.R. §73.1216.

⁹ See 47 C.F.R. §73.1217.

¹⁰ See 47 C.F.R. §73.1250.

¹¹ See 47 C.F.R. §73.1740.

¹² See 47 C.F.R. §73.1820.

unserved and underserved radio listeners, but they may, in fact, exacerbate that problem by driving smaller community broadcasters out of the market.

Finally, if SDARS providers are able to compete directly with terrestrial broadcasters by providing local programming, some broadcasters may be forced to deal with the loss in advertising revenue by decreasing or removing altogether valuable local programming. In any case, it is the public that will suffer.

III. SDARS providers should comply with the terms of their license

Allowing SDARS operators to make such a significant change in their programming structure long after the application process has been completed will undermine confidence in the Commission's application process. Many terrestrial radio stations raised valid concerns about competition from SDARS in general, and the Commission assuaged those concerns by its assurance that the direct competitive impact would be limited since terrestrial radio stations would continue to provide valuable local programming while SDARS would provide national programming. Allowing SDARS to withdraw from the commitment to national programming underlying their service will establish a negative precedent and encourage future applicants to promise one thing in an application and deliver something different once they obtain the license.

Conclusion

For the foregoing reasons, Radio One respectfully requests that the Commission prevent SDARS providers from offering locally-oriented programming.

Respectfully submitted,

RADIO ONE, INC.

By: _____
Linda J. Eckard Vilardo
General Counsel

RADIO ONE, INC.
5900 Princess Garden Parkway
7th Floor
Lanham, MD 20706
(301) 306-1111

CERTIFICATE OF SERVICE

I, Shaila E. Settles, a law clerk in the corporate offices of Radio One, Inc., do hereby certify that I have on this fourth day of June, 2004, caused to be mailed, a copy of the foregoing Comments to the following:

National Association of Broadcasters
1771 N Street, N.W.
Washington, D.C. 20036
(202) 429-5430

Shaila E. Settles